

**Statement of
Mark Rey
Under Secretary
Natural Resources and Environment
United States Department of Agriculture**

**Before the
Subcommittee on Public Land and Forests
Committee on Energy and Natural Resources
United States Senate**

**Concerning
S. 432 – Public Lands Production Research Act of 2003
S. 849 – Northern Arizona National Forest Land Exchange Act of 2003
S. 1582 – Valles Caldera Preservation Trust Act**

September 11, 2003

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the Administration's views on S. 432 – the Public Lands Production Research Act of 2002, S. 849 – the Northern Arizona National Forest Land Exchange Act of 2003, and S. 1582 - the Valles Caldera Preservation Trust Act. The Department does not oppose S. 432 and supports the concept of the land exchange embodied within S. 849. The Administration would have no objection to S. 1582, if amended, to address

concerns regarding the Federal competitive service, firefighting expenditures and the permanent Judgment Fund.

S. 432 – the Public Lands Production Research Act of 2003

S. 432 requires the Secretaries of Agriculture and the Interior to conduct and develop a research program into alternative wood preservative treatments for timber produced from public lands and lands withdrawn from the public domain for the National Forest System. This research program would include the use of silver-based biocides using silver produced from patented and unpatented mining claims. S. 432 provides that the research program may be implemented through contracts with public or private laboratories or research institutes with experience in the treatment of such products. The Department does not oppose S. 432.

The Forest Service has the largest forestry research organization in the world and is a national and international leader in forest conservation. Research conducted at our research stations and laboratories contributes to the advancement of science, and the conservation of many of our Nation's most valuable natural resources.

Forest Service scientists carry out basic and applied research to study biological, physical, and social sciences related to very diverse forests and rangelands. We produce information and technology to help manufacturers, mills, and small business operators become more efficient and friendly to the environment. We produce information and technology that can lead to improvements in forest conditions through the use of wood and fiber resources which are more diverse in species and size classes. Increasingly, new construction utilizes wood products

engineered to specified sizes, shapes, and properties, requiring new technologies and knowledge of wood and other materials. Researching the use of silver-based biocides will help us evaluate organic and non-petroleum adhesives for wood products which could provide new ways of making larger materials from smaller timber resources.

A few examples of silver compounds research conducted by Forest Service scientists include:

- Currently conducting a feasibility assessment of silver compounds as a preservative for southern pine;
- Comparing six silver compounds in laboratory tests for inhibition of fungal wood decay and Eastern subterranean termite damage;
- Testing leach to demonstrate that silver containing compounds bind to the woody substrate and can inhibit leaching of boron.

We commend the Chairman for recognizing the importance of research in this area. To our knowledge, the bill does not authorize any activity not already authorized under current law. USDA could designate this area of research as a high priority within existing authorities to address research priorities based upon resource issues across the Nation. The bill's legislative direction could require USDA to limit other high-priority programs or projects that may rely upon the same limited funding source.

S. 849 – the Northern Arizona National Forest Land Exchange Act of 2003

The Department supports the concept of a land exchange between Yavapai Ranch Limited Partnership, the Northern Yavapai, L.L.C. and the Forest Service, which would consolidate the largest remaining checkerboard ownership in Arizona. We do however, have some concerns related to the parcel deletion order and enforcement provisions associated with the conservation easements and would like to work with the committee on some clarifications.

S. 849 would authorize the exchange of approximately 55,000 acres of Federal and non-Federal land in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership. Pass-through provisions allow for some of the Federal land acquired by Yavapai Ranch Limited Partnership and the Northern Yavapai L.L.C. to be reconveyed to the cities of Flagstaff, Williams, and Camp Verde, Arizona, or to summer organizational camps identified in the bill.

This exchange can offer substantial benefits to all parties involved. The Forest units involved would benefit from simplified boundary management, reduced administrative costs, and the acquisition of lands adjacent to the Juniper Mesa Wilderness, which has significant forest, wildlife, and recreation values. Consolidating 110 square miles into solid Forest Service ownership is a significant gain from both administrative and resource standpoints.

The Department has suggestions to improve one section in the bill. Section 4 in S. 849 establishes conservation easements on the Camp Verde and Cottonwood parcels. These parcels

are located on the Prescott National Forest. S. 849 needs greater detail concerning: (1) how a memorandum of understanding with the State of Arizona will be developed to enforce the conservation easements; (2) when the memorandum will take effect and for how long; and (3) how the Federal Government will be removed from liability. We would be happy to work with the committee and the bill authors to provide additional details.

In addition, the Department is concerned that the evaluation of the Federal parcels due to the conservation easements could result in the transfer of far more Federal land to the owners of the Yavapai Ranch and its related limited liability corporation than would otherwise occur if the market value of the Federal estate were fully and fairly valued, but the Federal government will hold these conservation easements in perpetuity.

S. 1582 - Valles Caldera Preservation Act of 2003

S. 1582, introduced by Senators Domenici and Bingaman, would make modifications to Public Law 106-248, the Valles Caldera Preservation Act. The Administration would have no objection to S. 1582, if amended, to address concerns regarding the Federal competitive service, firefighting expenditures and the permanent Judgment Fund.

The Valles Caldera National Preserve located in central New Mexico is a unique landmass, with nationally important scientific, cultural, historic, recreational, ecological, wildlife, and fisheries values. In passing the Valles Caldera Preservation Act in 2000, Congress recognized those values and established the National Preserve as an experiment in public land administration that

incorporates elements of public and private administration so as to promote long-term financial stability consistent with the protection of the natural resources and the sustained yield for timber production, and domesticated livestock grazing. Under the terms and conditions of the 2000 Act, Secretary of Agriculture Ann Veneman authorized the Valles Caldera Trust to assume management of the National Preserve in August 2002. The Trust, comprised of 9 members appointed by the President, now oversees the management of the Preserve.

S. 1582 would:

- direct Federal agencies to classify rates of compensation and classification of Trust employees so that these employees are not precluded from consideration for Federal competitive service based on their current employment;
- allow the Board of Trustees to designate any Trust employees to solicit donations (under current law, only the Trustees may solicit donations);
- allow the Board of Trustees to set the compensation of the chair, subject to certain limitations;
- clarify that the prohibition against the disposal of real property by the Trust does not include the sale or other disposal of forage, forest products or marketable renewable resources;
- allow the Trust, subject to the laws applicable to Government corporations, to determine the character and necessity for any obligations and expenditures of the Trust and the manner in which expenditures and obligations shall be incurred, allowed, and paid;

- authorize the Trust to utilize the permanent judgment appropriation provided under section 1304 of title 31, U.S.C., for a claim, judgment, or settlement against the Trust; and
- direct the Secretary to provide, to the extent generally authorized at other units of the National Forest System, fire suppression and rehabilitation services and wildland fire severity funding for extraordinary preparedness. (The Secretary of Agriculture currently may provide pre-suppression, suppression and rehabilitation services at the request of the Trust, subject to reimbursement.)

The Administration has several concerns with S. 1582.

First, it should limit the number of Trust employees that may accept gifts in order to minimize the potential for fraud, conflicts of interest, or other ethical concerns.

Second, we have been advised that the Department of Justice opposes section 2(e) of the bill, regarding the eligibility of the Trust to pay claims, judgments, and settlements from the permanent judgment appropriation at 31 U.S.C. § 1304 (the “Judgment Fund”). In general, government corporations like the Trust should pay judgments and settlements out of their own funds. Because the Trust is an autonomous corporation with its own funds and an entity whose liabilities are properly charged to corporate funds, it is appropriate for the Trust to continue to satisfy judgments and settlements against it out of Trust funds.

Third, OPM advises that Section 2 (a) of the bill would extend to excepted service employees of the Trust a preferential opportunity to apply for competitive service positions elsewhere that are not open to Federal employees generally, thereby creating an inequity between Trust employees and excepted service employees throughout Government who have no such opportunity.

Fourth, complex or large fires can require the expenditure of extensive fire fighting and emergency stabilization and rehabilitation resources. However, the bill provides no limitation, by time or amount, to the funds that could be provided to the Trust under these proposed authorities. The original act provides an expectation that the Trust should work toward the goal of financial sustainability. We assume S. 1582 continues that expectation with regard to fire suppression. The measure could be improved with the inclusion of language to establish limits of duration and funding for expenditures associated with firefighting together with appropriate levels of reimbursement.

In addition, the intent of Sec. 4(b)(2) for the Secretary to provide "rehabilitation" needs to be clarified as to whether the intent is for the Secretary to provide emergency stabilization or rehabilitation. These are two different programs. Emergency stabilization funds come from the wildland fire emergency operations account and are meant to protect persons, property and resources immediately after a large and damaging wildfire. Rehabilitation activities are longer term and are conducted through other ongoing management activities funded under different program appropriations. We believe that the bill should focus solely upon emergency stabilization activities on the Preserve, subject to the same time and amount limitations discussed earlier related to firefighting.

In addition, section 4(b)(2) would delete the current authority for the Secretary to provide the Trust presuppression activities subject to reimbursement. We believe it is appropriate for presuppression and rehabilitation activities to be provided by the Forest Service, under a cooperative agreement, with reimbursement by the Trust.

This concludes my statement. I would be pleased to answer any questions that you may have.